AT&T

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Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket Nos. 16-143, 15-247, 05-25, RM-10593

Dear Ms. Dortch:

On October 12, 2016, Frank Simone, Keith Krom and the undersigned, all of AT&T, met separately with Amy Bender, Legal Advisor to Commissioner Michael O'Rielly and Nick Degani, Legal Advisor to Commissioner Ajit Pai. We discussed the attached document, which summarizes AT&T's position on Chairman Wheeler's recent Fact Sheet on the Business Data Services (BDS) proceeding.[1]

In addition, on October 12, 2016, Joan Marsh of AT&T had a separate telephone conference with Matt DelNero, Chief, Wireline Competition Bureau, during which Ms. Marsh indicated that AT&T agrees that the Commission should continue to forbear from applying most Title II regulation to packet-based BDS. However, AT&T disagrees with the other conclusions indicated by the Fact Sheet. The record does not support findings that legacy TDM services should be rate regulated in all markets; that proper calculation of an X-factor would result in an 11% price cap adjustment or 3% X-factor; or that new presumptions and heightened scrutiny on ILEC Ethernet services during the Section 208 complaint process are justified.

Pursuant to section 1.1206 of the Commission's rules, this ex parte notification is being filed electronically for inclusion in the record of the above-referenced proceeding. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,
/s/ Caroline Van Wie

cc: Amy Bender
Nick Degani
Matt DelNero

[1] FCC, Fact Sheet, Chairman Wheeler's Proposal To Promote Fairness, Competition, And Investment In The Business Data Services Market (Oct. 7, 2016).

Business Data Services

AT&T
October 2016

Summary

- Concluding that Ethernet is highly competitive and continuing to forbear from applying rate regulation to these services is the right outcome.
- However, the Commission's sweeping price cuts to all DS1 and DS3 services still risks broadband infrastructure investment – driving down TDM prices will indirectly depress Ethernet prices and slow the IP transition and the rollout of 5G.
- The Commission has no basis for finding that DS1s and DS3s are subject to insufficient competition everywhere – this finding would be diametrically opposed to the record evidence of extensive competition from CLECs and cable.
- The record does not support a finding that there is any need for a price cap reset, nor for a forward-looking X-factor of more than 2%.

The BDS Market is Highly Competitive

The record shows that the BDS market is highly competitive, for both Ethernet and TDM services.

- By 2013, non-ILEC providers had earned over 1/2 of all BDS revenues

Ethernet, at every speed, is highly competitive and should not be subject to *ex ante* price regulation.

- Vertical Systems recently found that "more than 60 percent of new [Ethernet] connections were delivered by CLECs and Cable MSOs during the first half of 2016.”
- ILEC Ethernet market shares have consistently fallen since 2010, while those of the CLECs' and cable MSOs have consistently increased.
- The Commission’s regressions found no evidence of market power for TDM services over 45 Mbps or for Ethernet services at any speed.

There Is No Basis For Subjecting All DS1s and DS3s To Price Cap Rate Regulation

In the FNPRM, the Commission's "key beliefs" included findings that:

- (1) Packet-based BDS and cable's Ethernet over HFC are both **"good substitute[s]"** for TDM BDS that can constrain TDM prices; and
- "[F]iber-based competitive supply **within at least half a mile** generally has a material effect on prices of BDS with bandwidths of 50 Mbps or less."

Given this, the Commission cannot conclude that adequate competition is not present for all, or even most, DS1s and DS3s.

95%	97%	99%
Of census blocks with BDS demand in MSAs have competitive facilities	Of BDS connections are in these census blocks	Of business establishments in MSAs are in these census blocks.

364 feet	456 feet	88 feet
On average, buildings with BDS demand are either connected to or within about *364 feet* of competitive fiber	3/4 of them are within 456 feet of competitive fiber	about 1/2 of these buildings are within only *88 feet* of competitive fiber facilities.

About **98%** of AT&T's BDS bandwidth and ***90%*** of AT&T's ***sub-50 Mbps bandwidth*** is located in buildings that are less than a 1/2 mile from at least one other provider's network.

There Is No Basis For Subjecting All DS1s and DS3s To Price Cap Rate Regulation cont'd

The regressions failed to find reliable evidence of actionable market power for DS1s and DS3s.

- None of the regressions found reliable evidence of market power for DS3s.
- At most, the regressions found that competition lowered DS1 prices by only 3-4%, and there was no standalone regression analysis for transport facility competition.

Mandating Significant Rate Cuts For TDM Services Will Slow Broadband Deployment

Competitive Fiber Providers and Cable Cos. are concerned about the impact mandatory BDS price reductions will have on their businesses.

- Wilcon: "must meet or beat prices of other providers of BDS" and argues that lowering CFP rates "even if limited to bandwidths at or below 50 Mbps, may unnecessarily cause CFPs to forego offering such services and as a result, reduce competition, thereby undermining the Commission's primary goal of enhancing competition."
- Charter: is "increasingly concerned" that decreasing Ethernet prices "could deter further investment and thwart the very competition the Commission has long sought to promote . . . particularly for small and medium-sized businesses." And this impact will occur whether or not Charter's prices are directly regulated because "Charter and other new entrants would be effectively capped by the ILEC rates."

In addition, the mandated across-the-board price cuts for TDM will slow the IP transition as customers opt to continue to buy legacy services at below market rates.

The Proposed Productivity Adjustments Are Unmoored from the Facts and the State of the TDM Market

- Using the only method of calculation on the record that is analytically correct *and* consistent with past FCC practices mandates a finding that there is no need for a price cap reset, or for a forward-looking X-factor of more than 2%
- Alternative proposals advanced by Sprint have been shown to be incorrect
    - EU-KLEMS: based on incorrect in-puts, and
    - BLS KLEMS + CACM: incorrect in-puts and unbalanced mathematical calculations
- And, given the rapid decline in these services, it is illogical to believe that TDM services are experiencing greater productivity gains than are other telecom sectors, which is the assumption underlying the Commission's proposed X-factor and price cap adjustment.

Questions?